



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

ONE ASHBURTON PLACE, ROOM 411

BOSTON, MASSACHUSETTS 02108

(617) 727-8352

(800) 462-OCPF

MARY F. MCTIGUE
DIRECTOR

June 24, 1994
AO-94-18

Mr. Leo McHugh
10 Jackson Road
Medford, MA 02155

Re: Receipt of anonymous gift

Dear Mr. McHugh:

This letter is in response to your May 27, 1994 request for an advisory opinion regarding your receipt of an anonymous gift.

Your political committee filed a statement of organization in November 1993. You have stated that in February 1994 you received a \$1,000 treasurer's check made payable to you personally. The check (a copy of which was provided with your advisory opinion request) has a space for the remitter's name. The space is blank. The check was accompanied by an unsigned typewritten note simply saying "Gratitude for help years ago." You have deposited the check in your personal savings account.

The facts which you have presented are unusual, and this opinion is limited to those facts. In particular, we note that the check at issue was not solicited for personal use or any other purpose. Such activity would raise substantial concerns regarding compliance with the campaign finance law.

We understand your letter to be a request for advice regarding what use you can make of the funds provided by the anonymous donor. The answer to your inquiry comes from a review of the definition of "contribution" in M.G.L. c. 55, the campaign finance law and from a review of other sections of the statute and the regulations issued by this office.¹

1. You have stated that you are not a public employee. However, if you were a public employee, we would advise you to contact the State Ethics Commission, since acceptance by a public employee of an anonymous gift would also raise issues relating to compliance with M.G.L. c. 268A, the conflict-of-interest law.

Section 1 of chapter 55 defines "contribution," in relevant part, as follows:

. . . a contribution of money or anything of value to an individual [or] candidate . . . for the purpose of influencing the nomination or election of said individual or candidate

If the check is a "contribution," rather than a gift not given with the intention that it be used for your campaign, you must comply with certain requirements imposed by the campaign finance law before the check could be accepted and used by your campaign. A "contribution" must reflect the name and residential address of the contributor, and section 10 of chapter 55 prohibits the receipt of any contribution which in any manner disguises its true origin. In addition, in accordance with the regulations issued by this office, anonymous contributions may not be accepted. See 970 CMR 1.04(5). Accordingly, where an anonymous check is received by a political committee, and the committee is unable to determine the identity of the donor, this office advises the committee to not use the check for political expenditures. Rather, the committee should purge its account by donating the check to a charitable entity. The same advice would apply to a candidate who individually receives such an anonymous gift or contribution.

You should initially try to determine if the check was intended to be a gift to you personally or a "contribution" to you as a candidate. Therefore, I suggest that you contact the bank which issued the treasurer's check to see if the bank can tell you who provided the funds on which the check was drawn. If you can learn who provided the funds, you should ask the donor if the funds were provided to you as a "contribution" as defined above, or in the alternative, as a gift. You should also ask the donor to confirm in writing the purpose of the "gift" or "contribution." You should fully document your attempt to locate the donor.

If the funds were provided as a "contribution," all provisions of the campaign finance law would be applicable to your acceptance of the check. You could transfer the check from your personal account to your committee account. Your committee would be required to maintain documentation demonstrating the true source and nature of the contribution, and would also be required to indicate on its next campaign finance report the name and residential address of the contributor.

On the other hand, if the funds were provided as a gift rather than a "contribution," the campaign finance law would not apply to your personal acceptance of the check. Any use of the funds in connection with your campaign, however, would remain subject to the campaign finance law, i.e., if you contribute or loan the funds to your committee, your committee would be required to report your contribution or loan on its next campaign finance report.

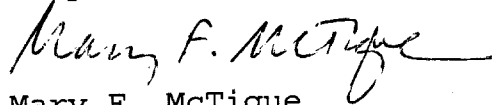
If you are not able to determine the identity of the contributor, your personal use of the check would not be

Mr. Leo McHugh
June 24, 1994
Page 3

prohibited, since we believe the note which accompanied the check reflects a probable intent to give the check to you personally and not as a contribution to your political committee.²

This opinion has been rendered solely on the basis of representations made in your letter, and solely in the context of M.G.L. c. 55. Please do not hesitate to contact this office should you have additional questions about this or any other campaign finance matter.

Very truly yours,



Mary F. McTigue
Director

MFM/cp

2. However, even if you are not able to contact the donor, you might wish to donate the check to a charitable entity, in order to avoid even the appearance of possible impropriety. Since the check was given only shortly after you began your campaign, and since the amount of the check is equal to the maximum annual contribution allowed for individuals, an inference might reasonably be drawn that the check was given as a "contribution."